

FILED**NOV 16 2015****COMMISSION ON
JUDICIAL PERFORMANCE**

Eugene G. Iredale, SBN: 75292
Julia Yoo, SBN: 231163
Grace Jun, SBN: 287973
IREDALE and YOO, APC
105 West F Street, Fourth Floor
San Diego, CA 92101-6036
TEL: (619) 233-1525 FAX: (619) 233-3221

Attorneys for the Honorable John A. Trice

**STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**

**INQUIRY CONCERNING JUDGE
JOHN A. TRICE**

**VERIFIED ANSWER OF JUDGE
JOHN TRICE TO NOTICE OF
FORMAL PROCEEDINGS**

INTRODUCTION

Respondent John A. Trice respectfully denies that he is guilty of willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or improper action within the meaning of Article VI, Section 18 of the California Constitution.

The allegations concern actions Judge Trice took as a private citizen to finalize a twenty-five-year-old marital settlement agreement with his former spouse; claims that he made intemperate remarks in a single e-mail to another judge and a

technical failure to make disclosure of his long-time friendship with a well-known local attorney who regularly appeared before the court.

Judge Trice appreciates the opportunity that the Commission has granted him to fully and publicly examine the true nature of his actions, which occurred in the tense, pressure-filled environment of a busy trial court. As to his personal marital settlement, the evidence will show that he acted responsibly to fairly meet his obligations as he understood them. The communications with other bench officers will be shown to be the byproduct of the stressful and pressurized environment of the court, which were sometimes blunt and direct, but which had neither the intent nor effect of bringing the court's processes into disrepute. The evidence will show that in the close-knit San Luis Obispo legal community, attorneys on both sides were fully aware of the social relationship between Judge Trice and the appearing attorney.

Lack of court leadership and chronic dissension has led to a fractured San Luis Obispo bench, with two distinct, persistent and sometimes feuding factions, infecting relationships among many members of the court. Judge Trice, with the assistance of others on the bench, took a proactive approach, working to end the problems of the court. They arranged for a state-provided judicial mediator to work with the court as a whole, to seek solutions that would serve the court and the community. This effort was intended to lessen personal animosity, and at the

same time, to allow the public to enjoy the quality of justice it deserves.

Unfortunately, the current presiding and assistant presiding judges refused to cooperate with, or participate in, the mediation opportunity.

Judge Trice looks forward to a full, fair, and impartial hearing before the Special Masters.

COUNT ONE, SUBSECTION A

Respondent admits the allegations of the first full paragraph, including the quoted provisions from the twenty-five-year-old divorce judgment.

Respondent admits the allegations of the second paragraph.

Respondent admits the allegations of the third paragraph.

Respondent admits in substance the allegations of the fourth paragraph, although this is not a complete description of the substance of the conversation.

Respondent admits the allegations of the fifth paragraph.

Respondent admits that he began receiving military retirement benefits in July 2012. He paid into a separate credit union account, albeit one not in Dawna Hulse's name, the estimated monthly amounts to which she was entitled.

Respondent admits having a later discussion with Commissioner Perry, but denies that the rendition of that discussion as set forth in paragraph 6 of the complaint is a complete and completely accurate account of the discussion.

Respondent admits the allegations of paragraph 7, including that he continued

to deposit Dawna's estimated share of the military pension into a separate credit union account.

Respondent admits the factual allegations of paragraph 8.

Respondent denies that his conduct violated the Code of Judicial Ethics, Canons 1, 2, and 2A.

COUNT ONE, SUBSECTION B

Respondent admits meeting on a date in May, 2014 with attorney Duenow to discuss the benefits under the MSA. Respondent made no false statements.

Respondent admits having a discussion with Court Executive Officer Susan Matherly regarding the general subject matter of the dissolution to explain to Ms. Matherly that a stipulation and order would be forthcoming, for Judge LaBarbera's review and signature. Respondent denies that the rendition of that conversation as set forth in paragraph 10 is a complete and completely accurate account.

Respondent denies knowingly making any false statements to Ms. Matherly.

The allegations of paragraph 12 are hopelessly vague. It is impossible to admit or deny "statements" made to nonspecific "others" allegedly implying things on unspecified dates and times.

Respondent denies that he violated Canons 1, 2, and 2A of the Code of Judicial Ethics.

COUNT ONE, SUBSECTION C

Respondent admits the allegations of paragraph 14.

Respondent admits signing the stipulation. He believes that the summary of the conversation in paragraph 15 is not complete and completely accurate.

Respondent admits the factual allegations of paragraph 16. He denies that he abused his authority or circumvented appropriate procedures. In fact, he acted as he did to avoid any impropriety or appearance of impropriety, which would have occurred had he submitted the document for review and approval to Commissioner Perry, as called for by the ordinary procedure.

Respondent denies violating Canon 1, 2, 2A and 2B(2).

COUNT TWO, SUBSECTION A

Respondent admits the factual allegations of Count 2A. Respondent denies that this conduct violated the Code of Judicial Ethics, Canons 1, 2, 3B(4), and 3C(2). Respondent asserts that the private communications between peers in the context of these events cannot be made the subject of state-imposed sanctions without violating the freedom of speech guaranteed by the California State Constitution, and the First Amendment of the U.S. Constitution.

COUNT TWO, SUBSECTION B

Respondent admits the factual allegations of Count 2B. The court reporter involved had previously been rude to court staff, the public, and attorneys assigned

to the court. She had yelled at persons with whom she had dealt. She was consistently tardy in completing and submitting transcripts. Respondent was concerned for the welfare of his staff, litigants, and the public. He did not act out of spite or pettiness, but in an attempt to ensure the smooth functioning of his courtroom. Respondent denies that his conduct violated Canons 1, 2A, 3B(4), 3C(1), and 3C(2).

COUNT THREE

Respondent admits that he has been, and is, a personal friend of attorney David Hurst. Respondent admits that Mr. Hurst has regularly appeared in his court. Respondent agrees that as a matter of regular practice, he does not disqualify himself or disclose his friendship with attorney Mr. Hurst on the record in all cases in which Mr. Hurst appears. Respondent denies that his conduct violates the Code of Judicial Ethics, Canons 3E(1), and 3E(2), because, *inter alia*, the prosecutors in the cases in which Mr. Hurst appeared knew of the friendship between Mr. Hurst and Respondent, making formal disclosure unnecessary.

EVIDENCE TO BE PRESENTED REGARDING RESPONDENT'S CHARACTER, QUALITIES, AND CONDUCT.

Respondent intends to present testimony of multiple witnesses in his defense, including statements heretofore provided by the following witnesses:

A. James Maguire, III; Public Defender, San Luis Obispo County

"I have known Judge Trice for more than 30 years. As Public Defender, I was often his adversary when he was with the District Attorney's office, including one death penalty case, which was granted a change of venue, and was ultimately televised for American Justice. After he was elected to the bench, I was Team Leader of several public defenders in his courtroom over a period of years. There have been long periods of time when I have seen Judge Trice in action on a daily basis. I can say without reservation that there is no better judicial officer on our bench. He is ethical. He is fair. He is skilled at combining legal scholarship and practicality in arriving at his rulings and verdicts.

Ours is a small legal community. Everyone, both lawyers and judicial officers, are highly visible. You do something well, everybody knows. You do something wrong, everybody knows. Among the practitioners I associate with, Judge Trice's reputation is of the highest quality."

B. Pete Pepper; Co-Coordinator, Mentoring Program; San Luis Obispo County Veterans Treatment Court

"Judge John Trice is a very powerful advocate for the veteran community, regularly demonstrating insight and compassion while presiding over the Veterans Treatment Court. As a Co-Coordinator for the court's mentoring program, I have witnessed firsthand his sensitivity and understanding of the challenges our veterans face as they return to our community. Having served in many roles in the Air Force, Judge Trice is intimately aware of what it takes to guide our veterans back. Mentors and veterans alike greatly admire his hard work, good guidance and understanding. Judge Trice's commitment emerges from the sacred obligation he feels to help those who have served, especially combat vets. Time and again, I have witnessed his willingness to go the extra mile, in the hope of healing the harm which came to vets while serving our country. We are extremely fortunate to have Judge Trice in the Veterans Court. Attend any session and you will witness the admiration and devotion which he has earned from the veterans he serves."

C. Cindy Marie Absey; Former Director, District Attorney Victim

Assistance Unit

"As director of the Victim/Witness Assistance Division of the San Luis Obispo County District Attorney's office for 30 years, I worked with John Trice both in his career as a prosecutor and later as a judge. During his prosecution of the Rex Krebs capital murder case in 1999-2000, I witnessed firsthand John's consummate competency and compassionate and respectful treatment of crime victims and their families. Over his years on the bench, Judge Trice has conducted countless hearings and trials with professional and respectful comportment towards all court users, and has consistently ensured that the rights of crime victims were balanced with those of offenders."

D. Jeffrey Stein; Private Criminal Defense Lawyer

"In the more than 30 years that I have known John Trice, from his arrival in San Luis Obispo to work as a district attorney, through his successful campaign for Superior Court office, I have come to a profound respect for his integrity, dedication and excellence as a trial lawyer and judge, doing the difficult work necessary in the criminal courts. He has always fought hard but fair as a prosecutor, and went to great lengths as a judge to find individualized, creative, compassionate solutions for those worthy, by history or situation, of a second chance, while displaying toughness when facts warranted. Our relationship has always been a professional one, never having been social companions. I come to this perspective purely from professional admiration.

In the end, the community is best served by the criminal justice system when dedicated, talented people devote themselves to safeguarding the public welfare, using wisdom and experience to craft balanced and individualized solutions. Judge Trice is just such a person. He is a dedicated public servant, striving to advance the greater good, and acting in an ethical, responsible and passionate way, seeking to give the public the justice that they deserve."

E. Jim Merzon; Civil Practice Attorney, Retired

"Judge John Trice and his wife were our neighbors for a number of years. As neighbors, we got to know Judge Trice's family, and found them always to be considerate neighbors, enjoying being part of many family events at their home. I knew Judge Trice when he was in the District Attorney's office and during his early years on the bench. He has always enjoyed a deservedly fine reputation as a prosecutor. As a criminal courts judge, he has proven himself as hard-working, knowledgeable and considerate, yet not afraid to impose sentences that fit the crime. In my experience, he has won the admiration of both prosecutors and defense attorneys."

Respectfully submitted,

Dated: November 13, 2015

Iredale and Yoo, APC

A handwritten signature in black ink, appearing to read 'Eugene Iredale', written over a horizontal line.

Eugene Iredale
Counsel for Respondent
Judge John A. Trice

VERIFICATION

I, JOHN A. TRICE, declare that:

I am the respondent judge in the above-entitled proceeding. I have read the foregoing Verified Answer. All the facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on this 13th day of November, 2015 at San Diego, California.


JOHN A. TRICE

PROOF OF SERVICE

I, Chris Barger, hereby declare as follows:

I am over the age of 18 years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 105 West F Street, Fourth Floor, San Diego, California 92101.

On November 13, 2015, I served the document named below on the following attorneys of record and/or interested parties in the Commission on Judicial Performance's matter involving the Honorable John A. Trice.


**VERIFIED ANSWER OF JUDGE JOHN A. TRICE TO NOTICE OF
FORMAL PROCEEDINGS**

[X] (By **FACSIMILE**) I served each of the above-referenced document(s) by sending to each parties' fax number listed herein:

Sei Shimoguchi, Esq.
Fax No. (415) 557-1266

Commission on Judicial Performance
Attn: Janice Brickley
Fax No. (415) 557-1160

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 13, 2015, in San Diego, California.


Chris Barger